



Office of the Comptroller of the Currency

Interpretations - Corporate Decision #96-57

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DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION BY UNION PLANTERS NATIONAL BANK, MEMPHIS, TENNESSEE, TO PURCHASE BRANCHES, INCLUDING THE ASSOCIATED ASSETS AND LIABILITIES, OF UNION PLANTERS BANK OF MISSISSIPPI, GRENADA, MISSISSIPPI, AND UNION PLANTERS BANK OF NORTHWEST MISSISSIPPI, CLARKSDALE, MISSISSIPPI

September 30, 1996

I. Introduction

On July 12, 1996, applications were filed with the Office of the Comptroller of the Currency by Union Planters National Bank, Memphis, Tennessee, for approval to acquire and operate, through purchase and assumption transactions, four branches, and the associated assets and liabilities, and two ATMs of an affiliated bank, <NOTE: One of the ATM sites also includes an automated loan machine.> Union Planters Bank of Mississippi, Grenada, Mississippi (the Grenada bank), and one branch, and the associated assets and liabilities, from another affiliated bank, Union Planters Bank of Northwest Mississippi, Clarksdale, Mississippi (the Clarksdale bank).<NOTE: When the Clarksdale and Grenada banks are referred to together they will be called the "selling banks."> These transactions are proposed under the authority of 12 U.S.C. 24 (Seventh) and 12 U.S.C. 36(c) and subject to the provisions of the Bank Merger Act, codified at 12 U.S.C. 1828(c)(2). The National Bank has its main office in Memphis, Tennessee, and branches in Tennessee and Arkansas, and pertinent to and prior to these proposed transactions, will acquire a branch in Southaven, Mississippi. <NOTE: This branch is to be acquired as part of the merger, approved today by the OCC, of Leader Federal Bank for Savings (the Federal Savings Bank) into the National Bank. See Decision of the Office of the Comptroller of the Currency on the Application to Merge Leader Federal Bank for Savings, Memphis, Tennessee, with and into Union Planters National Bank, Memphis, Tennessee, and operate branches of Leader Federal Bank for Savings in Tennessee and Mississippi as Branches of Union Planters National Bank (September, 1996) (the Federal Savings Bank Acquisition).>

That transaction followed a prior transaction in which Union Planters Bank, N.A., West Memphis, Arkansas, relocated its main office from Arkansas to Tennessee, retained its 14 branch offices and one ATM in Arkansas, established a branch at the site of its former main office in Arkansas, and merged into the National Bank. See Decision of the Office of the Comptroller of the Currency on the Applications of Union Planters Bank, N.A., West Memphis, Arkansas, and Union Planters National Bank, Memphis, Tennessee (August 28, 1996) (the West Memphis acquisition).

As a result of these transactions, the National Bank has branches and ATMs in Tennessee and Arkansas and, prior to the consummation of these transactions, will have a branch in Mississippi.>

As of June 30, 1996, the National Bank had about \$2.14 billion in assets, and \$1.36 billion in deposits. <NOTE: As a result of the West Memphis acquisition, the assets of the National Bank increased by about \$213 million and the deposits by about \$181 million. As a result of the Federal Savings Bank acquisition approved today, its assets, upon consummation of that transaction, would increase by about \$3.19 billion and its deposits by about \$1.57 billion. The

immediate resale of four of the branches to an affiliated bank in Nashville, Tennessee, as previously mentioned and also approved today, would reduce the acquired assets by about \$157 million and the acquired deposits by about \$183 million.> The Grenada bank has 19 branches and seven ATMs and about \$624 million in assets and about \$507 million in deposits. The Clarksdale bank has 24 branches and seven ATMs and about \$565 million in assets and \$492 million in deposits. Both the Grenada and Clarksdale banks are state chartered. Each bank involved in this transaction is a BIF member and a wholly-owned subsidiary of Union Planters Corporation (the Bank Holding Company).

II. Summary

A. The purchase and assumption transaction may be authorized under 12 U.S.C. 24 (Seventh) in accordance with the standards set forth in the Bank Merger Act and the OCC's responsibilities under the Community Reinvestment Act.

B. Because the National Bank is located in Mississippi by virtue of the operation of the branch in Southaven, Mississippi, following the acquisition of the Federal Savings Bank, further branching in Mississippi is permitted under 12 U.S.C. 36(c) and applicable state law. These acquisitions do not constitute transactions subject to any limitations that may be imposed by the Riegle-Neal Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (enacted Sept. 29, 1994) (Riegle-Neal).

III. Analysis

A. Purchase and assumption authority under 12 U.S.C. 24 (Seventh)

National Banks have long been authorized to purchase the assets and assume the liabilities of other depository institutions as an activity incidental to banking under the authority of 12 U.S.C. 24 (Seventh). *See, e.g., City National Bank of Huron v. Fuller*, 52 F.2d 870, 872 (8th Cir. 1931). As will be discussed, where insured deposits are being acquired, the transaction must be reviewed for compliance with the Bank Merger Act, 12 U.S.C. 1828(c). In addition, as will be discussed, the transaction also must be reviewed in context of the requirements of the Community Reinvestment Act, 12 U.S.C. 2901 through 2907. In addition, the ability of the acquiring bank to retain and operate the branches must be in accordance with applicable branching laws.

B. Branching authority

Following the acquisition of the Federal Savings Bank, the National Bank will have a branch in Mississippi in addition to its branches in Tennessee and Arkansas. The applications, addressed here, by the National Bank to acquire branches and ATMs in Mississippi from two affiliated state banks constitute separate transactions from the merger with the Federal Savings Bank and the retention of the Federal Savings Bank's existing branch in Mississippi. Since the National Bank already will have a branch in Mississippi at the time of consummation of these transactions, this application constitutes an application by an interstate national bank to acquire additional branches in one of the states in which it already has a branch. These branch applications do not raise new issues, but only require application of established precedent for applying section 36(c) to interstate national banks.

The courts and the OCC have long held that, for purposes of section 36(c)(2), a national bank is considered to be "situated" in any state in which it has its main office or a branch and may establish new branches in any of those states under state branching laws as incorporated by the McFadden Act and applied to national banks. *See Seattle Trust & Savings Bank v. Bank of California, N.A.*, 492 F.2d 48, 51 (9th Cir.), *cert. denied*, 419 U.S. 844 (1974) (California bank with grandfathered branches in Washington

State is situated in Washington for section 36(c) purposes and may establish new branches there in the same way as other Washington-situated banks) (*Bank of California*). See also, e.g., Decision of the Office of the Comptroller of the Currency on the Applications of NationsBank of Florida, National Association, Madison, Florida, and NationsBank of Georgia, National Association, Atlanta, Georgia, p. 10-13 (OCC Corporate Decision 95-68, December 22, 1995) (acquisition through merger of national bank with main office in Georgia and branches in Florida by national bank with main office and branches in Georgia; acquiring bank, following merger, was determined to be situated in Georgia and Florida and was permitted to retain Florida branches).

The McFadden Act authorizes a national bank to establish new branches "at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to restrictions as to location imposed by the law of the State on State banks." 12 U.S.C. 36(c). This statute applies not just to the establishment of de novo branches but to the acquisition of existing branches from other depository institutions. See *State of Washington v. Heimann*, 633 F.2d 886, 889-90 (9th Cir. 1980). The bank can establish other branches within each state to the same extent as other national banks situated in that state, i.e., to the same extent that state law allows its state banks to have branches within the state. See *Bank of California*. Both before and after Riegle-Neal, the OCC has applied this principle from *Bank of California* in prior decisions involving national banks with operations in more than one state. See, e.g., Decision of the Office of the Comptroller of the Currency on the Applications of Bank Midwest of Kansas, N.A., and Bank Midwest, N.A. (OCC Corporate Decision No. 95-05, February 16, 1995) reprinted in Fed. Banking L. Rep. (CCH) 90,474 (Part II-B); Decision on the Applications of American Security Bank, N.A., Washington D.C., and Maryland National Bank, Baltimore, Maryland (OCC Corporate Decision No. 94-05, February 4, 1994), reprinted in [1993-94 Transfer Binder] Fed. Banking L. Rep. (CCH) 89,695 (Parts II-B-2 and III); the West Memphis Decision at Part II-B. The *Bank of California* case involved a national bank with its main office in San Francisco and branches in California. It also had grandfathered branches in Washington and Oregon. In 1970, it applied to the OCC for approval to establish a new branch in Washington. The OCC approved the branch, concluding that the Bank of California was situated in Washington for purposes of section 36(c) because of its grandfathered branches and so could establish other branches in Washington as Washington law allowed Washington banks to do. The Ninth Circuit affirmed this conclusion. The court expressly held that the Bank of California was "situated" in Washington for section 36(c) purposes through its grandfathered branch. *Seattle Trust*, 492 F.2d at 51.

The OCC has consistently applied this interpretation of "situated" in section 36(c) -- that a bank is situated in the state(s) where it has branches as well as the state of its main office. This statutory language and interpretation continue after Riegle-Neal. Existing branch authority in subsections 36(a), 36(b), and 36(c) is not changed by Riegle-Neal. The statutory language and legislative history clearly contemplate that existing authority under these provisions remains in effect. First, the new provision on exclusive authority for additional branches (new subsection 36(e)) is not operational until June 1, 1997. In addition, even after that date, it expressly does not apply in states in which the bank has its main office or already has a branch; and it also expressly includes, as a continuing source of authority, branching authorized "under this section" (i.e., Revised Statutes 5155, which includes existing subsections 36(a), 36(b), and 36(c)). See Riegle-Neal 102(b)(1) (adding new subsection (e) to section 36). <NOTE: Indeed, the section of Riegle-Neal that sets out the new source of interstate branching authority by permitting interstate merger transactions between banks provides that interstate banks formed under its provisions (section 44 interstate banks) have a

similar rule covering the establishment of additional branches by section 44 interstate banks within each state in which they have existing branches. *See* Riegle-Neal 102(a) (new section 44(d)(2)). Similarly, the provisions in Riegle-Neal regarding the ability of a state to opt-in to permit interstate branching through the establishment of *de novo* branches apply only to the *de novo* establishment of a bank's *first* branch in another state (other than the bank's home state) "in which the bank does not maintain a branch." *See* Riegle-Neal 103(a) (adding new subsection 36(g)). It does not apply to situations where a bank is establishing a new branch in its home state or in one of the states in which it already has a branch. In those situations, existing law under section 36(c) still applies. *See* Decision on the Applications of Community National Bank (OCC Corporate Decision No. 96-22, April 19, 1996) (Part II-B).

Moreover, 12 U.S.C. 36(f) (enacted as part of Riegle-Neal 102(b)) buttresses the intrastate branching authority of interstate banks by providing that:

The laws of the host state . . . regarding the establishment of intrastate branches shall apply to any branch in the host state of an out-of-state national bank to the same extent as such State laws apply to a branch of a bank chartered by that State

12 U.S.C. 36(f)(1)(A). Significantly, these provisions of section 36(f) apply to *any* interstate national bank without regard to the manner in which the national bank become interstate.>

Consequently, applying Mississippi branching law, as incorporated into Federal law by 12 U.S.C. 36(c), we conclude that the National Bank may acquire the proposed branches. Mississippi branching statutes permit statewide branching with several restrictions. *See* Miss. Code Ann. 81-7-7-(2)(a), (5)(d); 81-7-8(1)(c), 81-7-1a (1972 & Supp. 1995). First, branching is generally prohibited in towns of under 3,100 if there is another bank or branch in the town. *Id.* at 81-7-8-10(a), (c). The population of Southaven, where four of the branches proposed to be acquired are located is 17,949 according to the 1990 census, and the population of Olive Branch, where the other branch is located is 3,567 according to that census. Second, the regulator must determine that the public convenience and necessity is promoted. *Id.* at 81-7-1(1). <NOTE: For a discussion of this requirement, see II.C.3. of this Decision Statement. > Third, the bank must satisfy its minimum federal capital ratios. *Id.* at 81-7-8(6). <NOTE: State imposed capital requirements are applicable to national bank branching under the provisions of the last sentence of 12 U.S.C. 36(c). In this case, the state simply incorporates federal capital requirements and applies them to branching.> This requirement is met. With respect to the ATMs, state law provides that, in approving an ATM, the regulator "determine whether or not the proposed [facility] will provide bank customers with convenient access to the electronic transfer of funds." *Id.* at 81-5-100(3). Both ATMs sought to be acquired meet this requirement.<NOTE: The statute defines "electronic fund transfer" as the withdrawal of cash from or the deposit of checks or cash into an ATM, the application for or acceptance of a loan through use of an unmanned electronic device, the transfer of funds through use of an unmanned electronic device, or the issuance of a check by an unmanned electronic device. *Id.* at 81-5-100(1)(b). Both ATMs satisfy this definition because they will, at a minimum, dispense cash. In addition, both are located at sites -- a department store and a supermarket -- that are conveniently accessible to the public. In addition, we note that both were previously approved for operation at those sites by the state commissioner upon application by the selling state-chartered banks. >

C. Compliance with the Bank Merger Act

The Bank Merger Act requires the OCC's approval for any purchase of assets and transfer of deposit liabilities between insured depository institutions where the resulting bank will be a national bank. The OCC generally may not approve a transaction that would substantially lessen competition. Additionally, the banking factors, which include the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served, must also be considered. For the reasons stated below, we find that the transaction may be approved under 12 U.S.C. 1828(c).

1. Competition

Because the transactions between the National Bank and the selling banks would constitute a transaction

between affiliated institutions owned by the same bank holding company, the transactions do not have anticompetitive effects.

2. Financial and managerial resources

The financial and managerial resources of the National Bank are adequate to support the additional assets that will be acquired through these transactions. As a result of these transactions, the Bank Holding Company expects to improve the overall operations of the company through organizational efficiencies that come from aligning branches by their market or region. We find that the financial and managerial resources of the acquiring bank do not raise concerns that would cause these applications to be disapproved.

3. Convenience and needs

The acquiring bank will help meet the convenience and needs of the communities to be served. Upon completion of these transactions, customers who bank at the branches located in DeSoto County, Mississippi, will have available to them a significantly greater number of branches and ATMs at which to bank. Especially benefiting are customers of both the National Bank and the selling banks who live in one state and work in another, particularly in the Memphis metropolitan area. Currently, banking is not as convenient as it could be for customers who travel across state lines or for business customers who have operations in more than one state.

The National Bank offers a full line of banking products and services, and there will be no reduction in these offerings. There will be no branch consolidations or closings in connection with these transactions. We believe the impact of these transactions on convenience and needs of the communities to be served is consistent with approval of these applications.

D. The Community Reinvestment Act

Federal CRA requires the OCC to take into account the applicant's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, when evaluating certain applications, purchase and assumption transactions. *See* 12 U.S.C. 2902(30(e) and 2903. The National Bank and the selling banks each have "satisfactory" records with respect to their CRA performance. <NOTE: During the 30-day public comment period on this proposed transaction, protests were filed with the OCC by the Mid-South Peace and Justice Center and the Memphis Area Community Reinvestment Organization. The OCC has investigated and thoroughly considered the comments submitted by the protestants and found that the issues raised do not cause the OCC to question the institutions' CRA ratings. The OCC will address these issues in separate correspondence to the protestants.

We also note that the State of Mississippi specifically advised the National Bank that it is not opposed to these proposed acquisitions. *See* Letter by John S. Allison, Acting Commissioner, Department of Banking and Consumer Finance, to Lynn Lanigan, Vice President and Assistant Secretary, Union Planters Corporation (August 19, 1996) (noting that the National Bank had committed to the state that it would not branch outside of DeSoto County, where all of the branches to be acquired are located, prior to May 1, 1997, the date the state's opt-in legislation takes effect under the Riegle-Neal Act).>

The acquisition should have no adverse effects on the National Bank's CRA performance.

The National Bank will be subject to the Bank Holding Company's CRA statements, policies and procedures and will continue to serve communities delineated by itself and the selling banks. We further note that all of the Bank Holding Company's subsidiary banks and savings associations that have been examined for CRA performance received "outstanding" or "satisfactory" ratings.

IV. Conclusion and approval

For the reasons set forth above, we find that Union Planters National Bank, Memphis, Tennessee, is authorized to acquire through purchase and assumption transactions, pursuant to 12 U.S.C. 24 (Seventh), four branches and two ATMs from Union Planters Bank of Mississippi and one branch from Union Planters Bank of Northwest Mississippi, all located in Mississippi, and the associated assets and liabilities. In addition, we find that Union Planters National Bank is authorized to operate each of these facilities as a branch pursuant to 12 U.S.C. 36(c). Accordingly, this application is approved.

/s/

Julie L. Williams
Chief Counsel

Date: 09-30-96

Application Control Number: 96-SE-02-0035